

Recent Developments In Tax Planning From A European Perspective: The Impact on Off Shore Jurisdictions

As part of a pan European project to cut down on alleged illicit money laundering through financial institutions and legally created entities such as companies, foundations and trusts, the European Union has launched its fourth anti-money laundering Directive (see [http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2013:0045:FIN:EN:PDF](https://www.irishosted.co.uk/owa/redir.aspx?C=QezIXjKGc0C-oTzBYxaBbE9rzEN5DdFIV9U2vVaYiEVZUY0A-3J5eKPMlLC-W5NrtIs2pggCfjw.&URL=http%3a%2f%2feur-lex.europa.eu%2fLexUriServ%2fLexUriServ.do%3furi%3dCOM%3a2013%3a0045%3aFIN%3aEN%3aPDF)).

Its impact upon the world of tax planning and in particular tax consultants, accountants and lawyers is potentially highly significant as well as draconian. It raises interesting questions as to whether it is a proportionate response to the problem and the extent to which it might be in conflict with Convention rights to privacy and family life and the Data Protection Directive..

Further, it is debatable whether the intention of the Directive will actually be achieved or whether its purpose and effect will be diluted by restrictions imposed upon it by Member States when it comes to the practicability of enforcement and whether, more worryingly, an excessive zeal for regulation leads to new ways for illicit money laundering to be developed which will fall outwith even the existing regulatory regime.

As an illustration of such innovative approaches being undertaken by organised crime in this field one only has to consider the developments in the crypto currency markets and the illegal uses to which they are susceptible at present.

The regulatory thrust of the Directive as regards professionals such as auditors, accountants, lawyers, credit and financial institutions, is based on the simple premise of full disclosure by them when involved in the provision of certain advice, buying and selling of property or businesses, operating bank accounts and the management of companies and trusts. It proposes that due diligence be extended to anonymous accounts, occasional trading and other transactions where the threshold will be reduced, gambling services and requires the identity of beneficial ownership to be disclosed to an important extent.

The authors of the proposed Directive (the vote upon it is scheduled to take place on the 11 March 2014) believe that it will attack at source the twin evils of money laundering and tax evasion.

Whether this is correct remains to be seen but there must be a risk of misunderstanding the nature and concept of the trust instrument and especially how it applies and operates in Common Law jurisdictions and it's use and role in organising the personal affairs of families and individuals.

As regards tax evasion by individuals or corporations which is sought to be addressed by the Directive, surely the best way to target and reduce such abuses is on a general macro-economic level and for the lead to come through national governments on a policy level which can be adapted to each Member State's own perceived needs.

By seeking to impose an extra layer of regulation upon a system already compliant with existing money laundering provisions, there is a risk that the overall well intentioned aims of the EU will lead inadvertently to a growth in new illegal economic models that fall below any regulatory radar and increase the possibilities for organised crime groups and individuals to launder illicit monies or evade tax.

Richard Barraclough QC & Ian Whitehurst